

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DOUGLAS E. BARDEN
Plaintiff,

v.

06-C-0046

HURD MILLWORK COMPANY, INC., et al.,
Defendants.

DECISION AND ORDER

In April 2004, plaintiff Douglas E. Barden brought this putative class action in state court against defendant, Hurd Millwork, Inc. Subsequently, he filed an amended the complaint adding three defendants. Under the state court's scheduling order, defendants had until February 1, 2006 to respond to the amended complaint. On January 10, 2006, the case was removed to this court without objection from plaintiff. Once the case was removed, it was governed by Fed. R. Civ. P. 81(c), which gave defendants five days to answer the amended complaint. One defendant answered timely but the other three, apparently operating under the state court's scheduling order, did not respond until February 1 when they filed a motion to dismiss. Because they were late in responding, plaintiff moved for a default judgment. Plaintiff's motion will be denied. Default judgment is a harsh sanction and is generally not favored. Isby v. Clark, 100 F.3d 502, 504 (7th Circuit 1996). There is a strong policy favoring adjudication of cases on their merits over default judgment. Sec. Ins. Co. of Hartford v. Schipporeit, Inc., 69 F.3d 1377, 1381 (7th Cir. 1995). Imposing such sanction on a defendant who has been an active participant in litigation, now ongoing for almost two years and was acting under a scheduling entered in

state court, is not warranted. See Isby, 100 F.3d at 504 (noting that “because default judgments are not favored, especially in hotly contested cases, the district court did not abuse its discretion when it allowed the amended answer to be filed late in the game”).

Plaintiff’s response to defendants’ motion to dismiss will be due twenty-one days from the date of this order.

For the foregoing reasons,

IT IS ORDERED that plaintiff’s motion for default judgment is **DENIED**.

IT IS FURTHER ORDERED that plaintiff’s request for a stay of the briefing schedule is **DENIED AS MOOT**.

Dated at Milwaukee, Wisconsin this 23 day of February, 2006.

/s _____
LYNN ADELMAN
District Judge